

CITY COUNCIL MEETING  
FEBRUARY 1, 1989

REPORT BY CITY  
ATTORNEY CONCERNING  
THE LEGALITY OF  
AWARDING A BID TO  
A LOCAL BIDDER IN  
THE EVENT OF A  
TIE BID

CC-4(e)

CC-6

CC-12(a)

The City Attorney presented the following report concerning the legality of awarding the bid to a local bidder in the event of a tie bid:

At the Council meeting of January 18, 1989, questions were raised concerning appropriate procedures in case of a tie bid, and also whether a local bidder could be given preference in such cases to break the tie. To my surprise, I found no cases or statutes on the point. In fact, the only case law I found at all on this topic came out of the State of New York, and generally specified that in such instances, the "commissioner" who was responsible for the letting of such contracts could make the decision as long as the basis of how the decision was made to award the contract to a specific bidder was explained. This doesn't help us much.

I am aware that in other jurisdictions, tie bids have been broken by reference to either the postmarked date of the bid, or (as we have done here in Lodi) a coin toss conducted in the presence of the affected bidders. Either of these, or any other nondiscriminatory criteria, can probably be used. Such practice should be uniformly applied and probably should be spelled out in our bidding policies and requirements.

As to the question of whether the City could use the place of business as a factor in determining who would win in tie bid situations, I believe it would be inappropriate. In such cases as City of Inglewood, et al. v. Superior Court (1972) 7 C.3d 861, local preference was rejected by the California Supreme Court. The California Attorney General has also issued an opinion stating that counties may not establish bidding procedures under which a contractor is entitled to preference solely on the ground that the bidder's place of business was within that county (64 Ops.A.G. 670 (1981)).

In this opinion, the Attorney General, referring to the City of Inglewood case, supra, stated "... (T)he purposes of competitive bidding were confirmed by language of City of Inglewood, to the effect that it was in the public interest to have contracts awarded without favoritism and at the lowest price consistent with reasonable quality". (A.G.'s Opinion at 672) The Attorney General went on to state "Therefore, bidding procedures cannot be established which give preference to a contractor based on the location